2013 IL App (4th) 120430-U

NO. 4-12-0430

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 20, 2013
Carla Bender
4th District Appellate
Court, IL

In re: KEJUAN C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 12JD15
KEJUAN C.,	)	
Respondent-Appellant.	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Appointed counsel did not operate under a *per se* conflict of interest during respondent's delinquency proceedings because, even though the trial court appointed counsel as defense counsel and guardian *ad litem*, counsel never assumed the role of guardian *ad litem*.

(2) Respondent is entitled to one additional day of sentencing credit.

¶ 2 Respondent, Kejuan C., a minor, appeals from the trial court's judgment adjudicating him a delinquent minor and making him a ward of the court. The court (1) found the State had sufficiently proved that respondent committed the offense of possession of a stolen motor vehicle and (2) ordered respondent committed to the Department of Juvenile Justice for an indeterminate term.

¶ 3 In this appeal, respondent contends the trial court created a *per se* conflict of interest when it appointed counsel to act as both defense counsel and guardian *ad litem*. In the alternative,

he claims he is entitled to an additional day of sentencing credit. Because we find appointed counsel did not act as guardian *ad litem*, acting only as defense counsel, we reject respondent's claim and affirm the court's judgment. However, we award respondent an additional day of sentencing credit and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 On January 23, 2012, the State filed a petition for adjudication of delinquency, alleging respondent, born June 27, 1998, committed the offense of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2010)). On the day the petition was filed, the trial court conducted an admonition hearing, informing respondent of his rights in delinquency proceedings, including the right to be represented by an attorney. In response to the court's inquiry, respondent's mother requested the court appoint an attorney to "help with this new matter." The following exchange occurred:

> "THE COURT: Motion on behalf of the minor respondent for appointment of counsel. Motion will be allowed. Office of the public defender is appointed to act as court-appointed counsel and guardian *ad litem* for the minor. Assistant Public Defender Stephanie Corum appears.
>
> General denial, Ms. Corum?
>
> MS. CORUM: Yes, Your Honor."

Attorney Corum appeared at every subsequent hearing and represented respondent throughout the trial court proceedings. At each hearing in this matter the following parties appeared: the prosecutor, respondent's mother, at least one representative from the probation department,

respondent himself, and attorney Corum. Respondent's mother was not represented by an attorney.

¶ 6 In April 2012, the trial court conducted an adjudicatory hearing. The State's evidence demonstrated that at approximately 1:15 a.m. on January 21, 2012, Champaign police responded to a suspicious-vehicle call. A vehicle was left running in the middle of an apartment complex. A witness saw three teenaged males run from the vehicle. The police followed footprints in the snow, apprehended three males, and conducted a show up for the witness. The witness positively identified the males as the three she saw run from the vehicle. Respondent was one of the three. The vehicle the three males ran from had been reported stolen. After respondent was arrested and advised of his *Miranda* rights (*Miranda v. Arizona*, 384 US 436 (1966)), he admitted (1) he had been a passenger in the vehicle, (2) he ran from the vehicle, and (3) he knew the vehicle had been stolen.

¶ 7 At the close of this evidence, the State rested. Respondent did not present any evidence, but attorney Corum had conducted cross-examination of the State's witnesses. During closing arguments, counsel argued the State's evidence was insufficient and that respondent should be acquitted. Nevertheless, the court found the State "sustained their burden of proof. The respondent minor is found to have committed the offense of possession of a stolen motor vehicle as charged in the petition for adjudication of wardship. Based on that finding, respondent minor will be adjudged to be a delinquent minor."

¶ 8 In May 2012, the trial court conducted a dispositional hearing, at which neither party presented evidence, with the exception of the presentation of the social investigation report. The State recommended confinement within the Department of Juvenile Justice and respondent recommended probation. The court committed respondent to the Department of Juvenile Justice for an indeterminate term. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Respondent claims his court-appointed counsel operated under a *per se* conflict of interest after the trial court appointed the same attorney as counsel for respondent and guardian *ad litem*. The State claims, on the other hand, the court actually appointed the office, not a specific public defender to act as both, allowing another individual public defender to act as guardian *ad litem*, though no one ever appeared in that capacity. The State claims the record does not establish the court designated attorney Corum to act as the guardian *ad litem*, as respondent points to no conduct on attorney Corum's part that would suggest she may have acted as guardian *ad litem*. The State argues the record on appeal does not clearly show a violation of respondent's right to conflict-free counsel.

¶ 11 Our supreme court recently analzyed the respective roles of a defense attorney and a guardian *ad litem* in delinquency proceedings. *People v. Austin M.*, 2012 IL 111194, ¶¶ 66-77. Looking to the applicable statutory and constitutional framework, the court concluded that a juvenile involved in a delinquency proceeding has the absolute right to counsel. *Austin M.*, 2012 IL 111194, ¶ 76. "It is clear to us that a juvenile's right to counsel in a delinquency proceeding is firmly anchored in both due process and our statutory scheme." *Austin M.*, 2012 IL 111194, ¶ 76. The court likened juvenile delinquency proceedings to adult criminal prosecutions. *Austin M.*, 2012 IL 111194, ¶ 76. With that finding, the court determined "the type of 'counsel' which due process and our Juvenile Court Act require to be afforded juveniles in delinquency proceedings is that of *defense counsel*, that is, counsel which can only be provided by an attorney whose singular loyalty is to the defense of the juvenile." (Emphasis in original.) *Austin M.*, 2012 IL 111194, ¶ 77.

¶ 12 The court then addressed whether it is "constitutionally and statutorily permissible"

for the same attorney to act as defense counsel *and* guardian *ad litem* in a minor's delinquency proceeding. *Austin M.*, 2012 IL 111194, ¶ 78. The respondent in that case claimed such dual representation constituted a *per se* conflict of interest. The State claimed there must be evidence of an actual conflict of interest resulting from this dual representation. The court agreed with the respondent (*Austin M.*, 2012 IL 111194, ¶ 78) and found "an inherent conflict between the professional responsibilities of a defense attorney and a [guardian *ad litem*]" (*Austin M.*, 2012 IL 111194, ¶ 83). Because the interests sought to be protected are so different, an attorney attempting to fulfill both roles runs the substantial risk of rendering ineffective assistance. *Austin M.*, 2012 IL 111194, ¶ 84.

¶ 13 During its analysis, the court noted there is no requirement that a guardian *ad litem* be appointed in delinquency cases. Generally, one is appointed when there is no interested parent since the role of a guardian *ad litem* is that of a concerned parent–one owes a duty to the court and to society. *Austin M.*, 2012 IL 111194, ¶ 85. The guardian *ad litem* does not necessarily pursue an acquittal if an acquittal is not in the minor's best interest. As such, the role of guardian *ad litem* is different than defense counsel. Defense counsel must act as a "dedicated and zealous advocate" by holding the State to its burden of proving the juvenile committed the alleged offense beyond a reasonable doubt. *Austin M.*, 2012 IL 111194, ¶ 86. In other words, a defense counsel's role is to zealously pursue an acquittal. *Austin M.*, 2012 IL 111194, ¶ 85. After considering these opposing interests, the court concluded "that the interests of justice are best served by finding a *per se* conflict when minor's counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian *ad litem*." *Austin M.*, 2012 IL 111194, ¶ 86.

¶ 14 On appeal, citing *Austin M.*, respondent argues the trial court created a *per se* conflict

of interest when it appointed the office of the public defender "to act as court-appointed counsel and guardian *ad litem* for the minor." However, the State maintains that attorney Corum did not perform a dual or hybrid representation. According to the State, because the court appointed the *office* of the public defender as counsel and guardian *ad litem*, not attorney Corum individually as both, there can be no *per se* conflict of interest. The State contends that no assistant public defender ever appeared in the capacity as guardian *ad litem* throughout the court proceedings. Attorney Corum acted only in the capacity as defense counsel and therefore, the *per-se*-conflict-of-interest rule did not apply. We agree.

¶ 15 Setting aside for the moment the trial court's words, we consider whether the record demonstrates that the court effectively appointed a guardian *ad litem* in this case. As mentioned above, no other person appeared at the various hearings in this case other than the prosecutor, respondent, attorney Corum, respondent's mother, and at least one representative from the probation department. Thus, only the prosecutor and attorney Corum (1) had the opportunity to present a case in chief, (2) stated objections, (3) conducted cross-examination, and (4) made arguments and recommendations to the court. The record reveals attorney Corum conducted herself as defense counsel by zealously representing respondent, not as a guardian *ad litem* acting in respondent's best interests. Unlike the conduct of the attorney in *Austin M.*, we cannot say that attorney Corum aligned herself with respondent's mother, the prosecution, and the trial court "in an attempt to do what [s]he believed would be in the 'best interests' of [her] client[]." *Austin M.*, 2012 IL 111194, ¶ 91. The attorney in *Austin M.* demonstrated a certain "mindset" during his representation and "set the tone" that he shared a common goal with the court, the State, and the parents of "getting to 'the truth' " and getting his clients help from the system. *Austin M.*, 2012 IL 111194, ¶¶ 94, 98. Counsel's conduct

was not consistent with a defense attorney's mindset, wherein he or she would (1) tend to work toward the goal of demonstrating to the court that the evidence would reveal that his or her client is innocent and (2) tend to hold the State to its burden of proof. Unlike the attorney in *Austin M.*, Attorney Corum acted *on behalf of* respondent at all times during the proceedings. *Cf. Austin M.*, 2012 IL 111194, ¶ 101.

¶ 16 Despite the trial court's express appointment of the public defender's office as counsel and guardian *ad litem*, we conclude no guardian *ad litem* appeared in this case. Attorney Corum acted as a dedicated defense attorney with the mindset of representing respondent toward the goal of acquittal while holding the State to its burden of proof. Attorney Corum did not conduct herself as a guardian *ad litem* by aligning herself with respondent's mother, the court, or the State in determining the outcome given society's best interests. We find no *per se* conflict of interest. However, we caution trial courts to be mindful, when considering the appointment of counsel, to carefully select the terms used to ensure the roles and duties intended.

¶ 17 Finally, respondent contends he is entitled to one additional day of sentencing credit for time he spent in pretrial custody. At the dispositional hearing, the prosecutor informed the trial court respondent had been in custody between January 21, 2012, and February 27, 2012. However, the prosecutor miscalculated the number of days as 37, when actually the span between these two dates constitutes 38 days. The State concedes error and we accept the State's concession. We remand with directions to award respondent one additional day of sentencing credit for a total of 38 days.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment adjudicating

respondent a delinquent but we remand with directions to modify the dispositional order to award respondent 38 days of sentencing credit.

¶ 20 Affirmed as modified and remanded with directions.